IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 753 OF 2003

Sadashiv Govind Kesarkar]
Kolhapur Central Prison]
Kalanba, Dist: Kolhapur]..Appellant

versus

State of Maharashtra ..Respondents

Mrs. L. P. Khemani, Advocate appointed for the Appellant.

Mr. P. A. Pol, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
SMT. NISHITA MHATRE, JJ.

DATE : 21ST MARCH, 2007.

ORAL JUDGMENT : (Per: D. G. Deshpande, J.)

1. Heard Advocate appointed for the appellant - accused, who has filed this appeal, through jail and the learned APP for the State.

2. By this appeal, the accused is challenging his conviction under Section 302 of the Indian Penal Code and the sentence of imprisonment for life awarded to him along with fine.

3. Conviction of the accused is in the following background - accused Sadashiv was living at village with his wife Snehlata, son Avdhoot and two daughters Tejaswini and Tanuja. Everything was going on smoothly till Avdhoot was born because thereafter accused started carrying suspicion that his wife had illicit relations with Suresh Kokitkar and he was the father of Avdhoot. Because of the suspicion accused used to assault Snehlata but through mediators the matter was pacified. However, on 29.3.2002 at 6 a.m. accused killed Snehlata and son Avdhoot. Tejaswini (P.W. 6) saw the accused while holding blood stained scythe. Thereafter accused was seen waiting outside the house of Suresh Kokitkar. Suresh Kokitkar however took shelter in the house of Laxman Dadu Patil. By that time Baburao Ramchandra Kanade reached the spot and asked the accused about the happening and accused gave extra judicial confession that he murdered his wife and son. Then Baburao Kanade (P.W. 1) went to the house of the accused and found Snehlata and Avdhoot dead.

4. Information was given to P.W. 9 Shivaji Raikar. Along with Police Patil, P.W. 9 Shivaji

Raikar went to the spot and took away scythe from the accused. It was kept at the house of Vishnu Kesarkar by Shivaji Raikar. Police Station, Gadhinglaj was informed and P.I. Jadhavar came. Accused was arrested with blood stained clothes. FIR was obtained from Baburao Kanade (P.W. 1). The investigation was carried out, inquest panchnama and post mortem was conducted of the two bodies i.e. Snehlata and Avdhoot was recovered. Spot panchnama was made. All incriminating articles were recovered under the panchnama and sent to the C.A. and then charge sheet came to be filed. Before the trial court, the defence of the accused was of total denial and false implication. The trial court found that the prosecution has succeeded in proving the guilt of the accused, and, therefore, convicted the accused, as stated above. Hence, this Appeal.

5. Advocate for the accused contended that the entire case of the prosecution was based on the testimony of a child witness Tejaswani (P.W. 6) aged about 9 years and therefore her evidence was required to be accepted with a pinch of salt. According to her, the conduct of the child witness was unnatural and therefore she was not liable to be

believed.

6. Advocate for the accused also contended that there is no evidence to prove motive or intention, that is, to prove that the accused was suspecting that Avdhoot was a son from Suresh Kokitkar begotten to Snehlata. She also contended that evidence of other witnesses was full of suspicion and there were material omissions and contradictions and therefore the case of the prosecution was liable to be rejected and the judgment of the trial court was liable to be upset.

7. On the other hand, the learned APP contended that this was a full proof case against the accused. The prosecution has succeeded in proving the motive. There was eye witness, other corroborating evidence of recovery of blood stained clothes of the accused, his extra judicial confession, recovery of scythe, were all found sufficient by the trial court to convict the accused and hence no interference was called.

8. We have given our anxious consideration to the submissions made by the Advocate for the Accused

and the learned APP, and, we are of the view that no fault can be found with the judgment of the trial court and this appeal is required to be dismissed for the following reasons.

9. P.W. 1 is Baburao Kanade to whom accused made extra judicial confession. He has stated that on 29.3.2002 his mother woke him up at 6.15 a.m. and told him to see what has happened as somebody was crying in the lane. He therefore came out of the house, saw the accused standing at the door of Suresh Kokitkar. Accused was holding scythe in his hand and he asked accused as to what happened and accused told him **"Babuanna I had killed my wife and my son."** Accused further uttered that Suresh Kokitkar had love affair with his wife. P.W. 1 heard accused uttering **"Suresh you come outside**." Thereafter he went to the house of the accused and saw the bodies of Snehlata and Avdhoot. They had injuries on their neck. Then he came back to his house gave a phone call to Shri Raikar Sir (may be Raikar teacher) to come with Police Patil and Raikar Sir took away the scythe from the hand of the accused. It was stained with blood. There were blood stains on the body and clothes of of accused. Then the Police Patil gave information to the police

station, police came and this witness gave a report Exhibit 34. He identified scythe Article 7.

10. P.W. 1 was subjected to cross-examination, wherein he has stated that he was retired Ex-Armyman. He was also examined about some election of Ramling Vikas Seva Sanstha, but absolutely nothing could be brought out in the cross-examination to create any doubt about the testimony of this witness. He is totally disinterested either in the accused or the prosecution. Extra Judicial confession made to him, cannot be said to be unnatural because it was pursuant to the question put by this witness to the accused that the accused made the extra judicial confession. The words used are very significant **"Babuanna I had killed my wife and my son."** The use of the words **"Babuanna"** clearly shows that witness P.W. 1 was well known and acquainted to the accused and he is not a stranger. He was cross-examined about the colour of saree of Snehlata and number of injuries. He was unable to give those details, but that does not affect his testimony at all. He denied the suggestion that no confession was made to him and no scythe was seen by him in the hands of

the accused.

11. There is no doubt about the fact that Snehlata and Avdhoot were killed and their death is not accidental or suicidal. Therefore, there is no necessity to discuss that part of the evidence or even with the post mortem or panchnama and also there is no necessity to consider the spot of the offence because the bodies were admittedly in the house of the accused himself.

12. The next important witness of the prosecution is P.W. 4 Mahadev Rashivade he was called by P.I. Jadhavar (P.W. 14), in whose presence Shivaji Raikar produced scythe, panchnama was prepared. He identified the scythe. Panchnama is Exhibit 41. He identified the scythe - Article 7. Then arrest panchnama was made in his presence and he stated that there were blood stains on the clothes of the accused. Those clothes were seized and sealed vide Exhibit 42. The cross-examination of this witness, has not resulted in shaking the credibility of this witness, in the least.

13. The next important witness is a minor girl

Tejaswani (P.W. 6) aged about 9 years. The trial court verified that she understands the oath and also understands the questions put to her, therefore oath was administered to her and then after stating about the relationship with the deceased, the accused, Avdhoot, etc. that her mother and Avdhoot died on 29.3.2002. On that day she got up at about 6 a.m. as her school time was 7 a.m. to 11 a.m. She heard some sound, she got up and came outside and found that in the first room Avdhoot was lying inside the door and blood was oozing from his neck and her father was standing at the door with scythe in his hand. There was blood over the scythe. Her sister Tanuja came and told her that **"Mammi was lying near bathroom and Pappa had assaulted mummy by scythe."** In the cross-examination witness stated that she came in the court with her two maternal uncles Vinumama and Sachinmama who were present on that date also. She was not given the statement to read (may be by the police). She stated that she could not tell on which part of the scythe there was blood. She could not tell whether Avdhoot was lying on left or right side and how much blood was coming from the neck of Avdhoot. She stated that her father was standing his face down condition. He was

shouting. That she would not tell the words uttered by her father. She denied the suggestion that she was deposing falsely. There is absolutely no cross-examination worthy of consideration. No motive attributed to the witness why she will depose against her own father. No motive is attributed to her. There are no omissions or contradictions in her evidence at all with reference to her police statement. In fact these two witnesses i.e. P.W. 6 and P.W. 9, itself are sufficient to prove the guilt of the accused. However, there is one more witness P.W. 8 Suresh Kokitkar (P.W. 8), a person about whom the accused was bearing suspicion that Snehlata had illicit relations. He had stated that on 29.3.2002 he was sleeping in his house, at about 6.30 a.m. he heard the shouts, he went outside the house and he saw accused coming to his lane by holding the scythe. Ananda Shinde was behind the accused and Ananda gave a signal to the witness to go and therefore P.W. 8 Suresh Kokitkar entered the house of Laxman Dadu Patil and bolted it from inside. Accused came there, shouted **"You come outside, I will kill you"** and that he is coming out after killing his wife and son and he gave two blows to the door of Laxman Patil. In the

cross-examination, the witness stated that he was not aware whether accused had suspicion about the character of his wife. He was confronted with his statement to the police wherein he has stated that he had learnt that accused had beaten her wife on account of his suspicion. He also stated that he saw the accused on that day accused tried to assault him by throwing the scythe from his person. There is nothing in the cross-examination to falsify this witness. All this evidence is corroborated by P.W. 9 Shivaji Raikar. He has stated that in Raikar Lane he saw accused in front of house of Suresh Kokitkar. Accused had scythe in his hand. It was blood stained. He asked the accused **"Sadu what you had done this**." Then the accused told that "**he had killed Lata and his son".** Witness also saw blood stains on the body and clothes of the accused and that he was in excited condition. Accused also stated that Suresh Kokitkar should be given in his custody so that he could kill him. Then the witness showed courage to embrass the accused and took away scythe from his hand and kept in the house of Vishnu Kesarkar, which was recovered by the police. Evidence of this witness also fully corroborates the prosecution case. There is absolutely nothing to

doubt about the veracity of this witness.

14. For proving the motive and intention of the accused, the prosecution has examined P.W. 10 Suman Sadashiv Raikar, mother of deceased Snehlata and grand mother of Avdhoot. She has stated that after the birth of Avdhoot, accused started quarrelling with Snehlata due to suspicion of her character. She has stated that on that count accused had assaulted Snehlata with a steel rod and Snehlata was admitted in the hospital of Dr. Malvi at Gadhinglaj. Then Snehlata started living with her mother. Thereafter because through mediator accused begged pardon, he was forgiven and Snehlata went to reside with the accused but this ill-treatment and suspicion continued. On 29.3.2002 at 6.30 a.m. she heard the shouts of ladies, she came to her court yard and went to the house of Snehlata, she saw the accused standing at the door of his house with a blood stained scythe in his hand and Sadashiv was shouting **"Govind Kesarkar Yache Lekane Zenda Lavla".** Then she saw the body of her daughter Snehlata and grand-son Avdhoot. She was cross-examined about the ill-treatment and her so-called inaction of not lodging report about beating to Snehlata by rod etc.

But nothing fruitful has come on the record. This is a fully proved case against the accused. The trial court was perfectly justified in convicting the accused for the offence of murder. We find no reasons to interfere, hence appeal is dismissed. Office to communicate this order to the accused. Rs.500/- is the fee quantified for the Advocate appointed for the accused.

(SMT. NISHITA MHATRE, J.) **(D.G. DESHPANDE, J.)**